
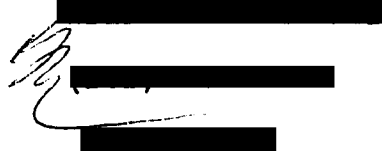
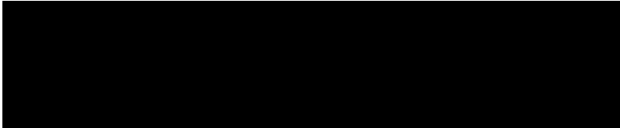




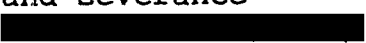



Date 8/7/90

Signature 








Employer Identification Number: 






Dear Applicant:

This refers to your application for recognition of exemption under section 501(c)(9) of the Internal Revenue Code.

The information furnished reflects that you were formed on , to fund death, disability, and severance benefits for non-union full-time employees of  and  (hereafter Company). It appears that  individuals qualified for employee benefits in .

The disability and severance benefits are self-funded while the death benefits are insured. The information furnished shows that the severance benefits are a uniform percent of compensation based on years of service (1% for the 1st year of service up to 200% for the 10th year of service). You indicate that no one has been with the Company for 10 years. The Disability benefit is 100% of compensation. The death benefits are based on 8 times compensation.

, ,  and  (hereafter the 4 owners) are each 25% owners in the Company. The information furnished shows that in  the 4 owners made 49 percent of the severance contributions and 30 percent of the disability contributions.

With respect to the death benefits, you indicate that only  employees are covered because one of the owners () is uninsurable. In addition, you indicate that , , and  are covered by Universal Life Policies whereas the other participating employees are covered by Group Term Life Policies. You indicate that the Universal Life Policies are in your name and that only you have a right to the cash and/or loan value of the Universal Life Policies. You state that you are using the cash value and dividends "as an offset against future funding for severance and disability, [and] as an asset of the trust and ...investment vehicle[s]."

[REDACTED]

You furnished a list of participating employees which showed the amount of premiums you paid on behalf of each participant in [REDACTED]. The list showed the following, with respect to the death benefits:

The ■ owners - \$ [REDACTED]

The other participants - \$ [REDACTED]

Total Premiums - \$ [REDACTED]

The information furnished reflects that approximately 90 percent of your premium expense was used to pay insurance premiums on the lives of [REDACTED], [REDACTED], and [REDACTED].

Section 501(c)(9) of the Code provides for exemption for voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(a) of the Income Tax Regulations states, in part, that no part of the net earnings of an employee's association may inure to the benefit of any private shareholder or individual other than through the payments of benefits permitted by section 1.501(c)(9)-3. Whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances.

Section 1.501(c)(9)-2(a)(2)(i) of the regulations states, in pertinent part, that "eligibility for benefits may not be subject to conditions or limitations that have the effect of entitling officers, shareholders, or highly compensated employees... to benefits that are disproportionate in relation to benefits to which other members of the association are entitled."

A section 501(c)(9) VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related common bond. Prohibited inurement arises when a VEBA benefits one or more individuals other than through the performance of functions characteristic of an organization described in section 501(c)(9). Thus, the inurement proscription would bar tax-exempt treatment of an organization predominantly organized and operated to promote the interest of an individual standing in relationship to the organization as an investor for private gain.

[REDACTED]

In your case, the annual cost for the death benefits for your owner-members is more than 50 percent of the total annual cost of the death benefits available under the plan. In addition, by reason of their ownership and control over the Company, your owner-members have ultimate control over the continued existence of the trust.

Under these circumstances, we believe that your owner-members maintain a posture that is incompatible with the inurement proscription of section 1.501(c)(9)-4(a) of the regulations. A limited membership in combination with allocation of a dominant share of the cost of the aggregate benefits to the owner-members indicate that the VEBA is organized and operated for the benefit of its owner-members and not for any employee group. The trust would be subject to termination at the discretion of the owner-members. An organization functioning in this manner is inconsistent with the exempt purpose of a VEBA of providing benefits to promote the common welfare of an association of employees, as opposed to the welfare of the owner-member. Accordingly, we conclude that you are operating in contravention of section 1.501(c)(9)-4(a) of the regulations.

Moreover, because only owner-members are covered by Universal Life policies, and the other participants are only eligible for coverage by a Group Term Life policy, we conclude that the owner-members receive death benefits that are disproportionate in relation to benefits received by other participants in contravention of Section 1.501(c)(9)-2(a)(2)(i) of the regulations.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Baltimore, Maryland. Thereafter, any questions about your federal income tax status should be addressed to that office.

Sincerely yours,

(Signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: [REDACTED]
Attn: EO Group

cc: [REDACTED]

cc: [REDACTED]

RECEIVED

DEC 18 1990

District Director of Internal Revenue
CHIEF, TECHNICAL STAFF
BALTIMORE